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# INTERNATIONAL COUNTERTRADE

## Draft chapters of Legal Guide on International Countertrade Transactions

## Report of the Secretary-General

1. The Commission considered its possible work on the topic of countertrade at its nineteenth session (1986) in the context of the discussion of a note by the Secretariat entitled "Future work in the area of the new international economic order" (A/CN.9/277). There was considerable support in the Commission for undertaking work on the topic, and the Secretariat was requested to prepare a preliminary study on the subject (A/41/17, para. 243).

2. At its twenty-first session (1988), the Commission had before it a report entitled "Preliminary study of legal issues in international countertrade" (A/CN.9/302). The Commission made a preliminary decision that it would be desirable to prepare a legal guide on drawing up countertrade contracts. In order for the Commission to decide what further action might be taken, the Commission requested the Secretariat to prepare for the twenty-second session of the Commission a draft outline of such a legal guide (A/43/17, paras. 32-35).

3. At its twenty-second session (1989), the Commission considered the report entitled "Draft outline of the possible content and structure of a legal guide on drawing up international countertrade contracts" (A/CN.9/322). It was decided that such a legal guide should be prepared by the Commission, and the Secretariat was requested to prepare for the twenty-third session of the Commission draft chapters of the legal guide (A/44/17, paras. 245-249).

4. At its twenty-third session (1990), the Commission considered an outline of the introductory chapter to the legal guide, and draft chapter II, "Scope and terminology of legal guide" (both in A/CN.9/332/Add.1), as well as the following draft chapters: III. "Contracting approach" (Add.2); IV. "General remarks on drafting" (Add.3); V. "Type, quality and quantity of goods" (Add.4); VI. "Pricing of goods" (Add.5); IX. "Payment" (Add.6); and XII. "Security for performance" (Add.7). The discussion in the Commission is reflected in A/45/17, annex I. There was general agreement in the Commission with the overall approach taken in preparing the draft chapters, both as to the structure of the legal guide and as to the nature of the description and advice contained therein (A/45/17, para. 16). The Commission decided that the Secretariat should complete the preparation of the remaining draft chapters

and submit them to the Working Group on International Payments. It was also decided that the final text of the legal guide should be submitted to the twenty-fifth session of the Commission in 1992 (A/45/17, paras. 17 and 18).

5. The Working Group on International Payments, at its twenty-third session in September 1991, considered draft chapters VII. "Fulfilment of countertrade commitment" (A/CN.9/332/Add.8); VIII. "Participation of third parties" (A/CN.9/WG.IV/WP.51/Add.1); X. "Restrictions on resale of goods (Add.2); XI. "Liquidated damages and penalty clauses" (Add.3*); XIII. "Failure to complete countertrade transaction" (Add.4); XIV. "Choice of law" (Add.5); XV. "Settlement of disputes" (Add.6); and draft illustrative provisions (Add.7*). The discussion in the Working Group is reflected in document A/CN.9/357. The Working Group requested the Secretariat to revise the draft chapters and illustrative provisions in the light of the Working Group's deliberations and decisions and to present them to the twenty-fifth session of the Commission (A/CN.9/357, para. 13).

6. Addenda 1 to 17 to the present document contain the following revised draft chapters and other materials relating to the Legal Guide:

I. "Introduction" (Add.1)

II. "Scope and terminology of Legal Guide" (Add.2)

III. "Contracting approach" (Add.3)

IV. "Countertrade commitment" (Add.4) (draft chapter IV incorporates revised earlier draft chapter VII, "Fulfilment of countertrade commitment" and revised section C of earlier draft chapter III, "Contracting approach")

V. "General remarks on drafting" (Add.5)

VI. "Type, quality and quantity of goods" (Add. 6)

VII. "Pricing of goods" (Add.7)

VIII. "Participation of third parties" (Add.8)

IX. "Payment" (Add.9)

X. "Restrictions on resale of goods" (Add.10)

XI. "Liquidated damages and penalty clauses" (Add.11)

XII. "Security for performance" (Add.12)

XIII. "Failure to complete countertrade transaction" (Add.13)

XIV. "Choice of law" (Add.14)

XV. "Settlement of disputes" (Add.15)

Draft illustrative provisions (Add.16)

Summaries of draft chapters (Add.17)

Index (Add.18)